

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**UNITED STATES OF AMERICA,**

**Appellee,**

**v.**

**CASE NO.: 22-4689**

**DIANA TOEBBE,**

**Appellant.**

**APPELLANT’S MOTION FOR APPOINTMENT OF CO-COUNSEL**

COMES NOW the Appellant, Diana Toebbe, by counsel, Barry P. Beck, Esq., and moves the Court to appoint Jessica N. Carmichael, Esq. as co-counsel in the above-captioned appeal. In support thereof, the Appellant states the following:

1. This appeal arises from Diana Toebbe’s conviction and sentence in the United States District Court for the Northern District of West Virginia, on one count of conspiring with her husband and co-defendant, Jonathan Toebbe, to communicate “Restricted Data,” in violation of 42 U.S.C. §§ 2274(a) and 2014. Mrs. Toebbe was convicted pursuant to a plea agreement. On November 17, 2022, she was sentenced to a term of imprisonment of 262 months.

2. In the proceedings below, Mrs. Toebbe was represented by two court-appointed counsel. The undersigned counsel, who is licensed to practice law in West Virginia and is admitted to the bar of the district court, was appointed to represent Mrs. Toebbe. However, because the undersigned counsel does not possess a security clearance to review classified information, it was necessary for the district court to appoint an attorney with a security clearance as co-counsel. Initially, Edward B. MacMahon, Jr., Esq. of Middleburg, Virginia was appointed as co-counsel. However, approximately three months prior to the conclusion of the

proceedings in the district court, Mr. MacMahon had to withdraw from the case for personal reasons. At that time, the district court appointed Jessica N. Carmichael, Esq. of Alexandria, Virginia as substitute co-counsel. Mrs. Carmichael served as co-counsel for Mrs. Toebbe during the negotiation of her second plea agreement (her first plea agreement was rejected by the district court) and through her sentencing. Although Mrs. Carmichael possessed the clearance to be able to review the classified information in the case, she did not have the history with the case that the undersigned counsel has, having been involved since its inception.

3. It is anticipated that Mrs. Toebbe's appeal to this Court will raise issues involving some of the classified information that was presented to the district court in connection with her sentencing. To address those issues, it will be necessary to review the classified information and present it to the Court in compliance with the requirements of the Classified Information Procedures Act, 18 U.S.C. App. III ("CIPA"). Because of the classified nature of some of the case materials, and cleared counsel's relatively short involvement in the case, as well as the complexity of classified national security cases generally, the undersigned counsel respectfully requests that Mrs. Carmichael be appointed as co-counsel for Mrs. Toebbe on appeal.

4. If Mrs. Carmichael is appointed co-counsel, she and the undersigned counsel would exercise their best efforts to keep the costs of the Appellant's representation as low as possible by dividing work rather than duplicating it.

Wherefore, the Appellant respectfully requests that the Court appoint Jessica N. Carmichael, Esq. as co-counsel for this appeal.

**APPELLANT**  
**By Counsel**

/s/ Barry P. Beck

Barry P. Beck

Power, Beck & Matzureff

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**CERTIFICATE OF SERVICE**

I, Barry P. Beck, counsel for Defendant, hereby certify that on the 14th day of December, 2022, the foregoing **APPELLANT’S MOTION FOR APPOINTMENT OF CO-COUNSEL** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Barry P. Beck

Barry P. Beck

